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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,723	03/29/2004	Ramachandra Shastry	2664-000015/US	1437

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EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/811,723	Applicant(s) SHASTRY ET AL.	
	Examiner Lezah W. Roberts	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 20-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office Action is in response to the Amendment filed July 31, 2006. All previous rejections have been withdrawn unless indicated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This Action is made **NON-FINAL**.

### *Claims*

#### **Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejection)**

1) Claims 1-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 6,958,144) in view of Rathburn (US 2,439,056). The rejection is maintained.

Applicant argues in regards to Montgomery, there is no other disclosure of an alternative method of application. Without an alternative disclosure, there is no motivation to use any other application methods. In regards to Rathburn '056, there is no disclosure of applying any additional treatment to the teeth after cleaning them. In particular, there is no disclosure or suggestion of leaving the cleaning formula on the teeth while an additional material is added to the teeth. Without disclosing that additional treatments can be applied, there is no motivation to apply any additional treatments. Applicant further argues the legal conclusion of obviousness requires that there be some suggestion, motivation, or teaching in the prior art whereby a person of ordinary skill in the art would have selected the components that the inventor selected

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and used them to make the new device (*C. R. Bard, Inc. v. M3 Sys., Inc.* 157 F.3d 1340, 1351 (CAFC 1998)). Applicant concludes Montgomery and Rathburn do not provide any motivation to combine these references. Rathburn lacks any suggestion of adding additional materials to the teeth while the cleaning material is still present, and Montgomery lacks any suggestion of an alternative to dental trays for application of the material. The argument is not persuasive.

The primary reference discloses a method comprising applying a buffering composition to the teeth making the teeth surface pH range from 7 to 10. This step is followed with applying a peroxide tooth composition to the teeth. The reference does not teach how the buffering compositions are applied therefore it is up to one of ordinary skill in the art to look for ways to apply the buffering compositions. The motivation to combine the two references comes from the secondary reference where it would be an advantage to apply the bicarbonate while removing foreign objects from the teeth before the whitening composition is applied. The wipe is also cost effective. These are "motivations" for modifying the primary reference and teachings. Therefore the rejection is maintained.

2) Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (6,958,144) in view of Rathburn (US 2,439,056) as applied to claims 1-16 and 19 above, and further in view of Sagel et al. (US 5,891,453). The rejection is maintained.

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Applicant argues claim 10 is patentable based on the arguments above. The argument is not persuasive.

It is the Examiner's position based on the arguments above that claim 10 is not patentable therefore claim 17 is not patentable.

**Claim Rejections - 35 USC § 103 – Obviousness (New Rejection)**

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 6,958,144) in view of Rathburn (US 2,439,056).

Montgomery teaches compositions and methods of whitening teeth using a two-step method. The method comprises applying a buffering composition to the teeth making the teeth surface pH range from 7 to 10. A peroxide tooth composition is applied to the teeth after the buffering composition (col. 3, lines 22-31). The buffering composition may comprise potassium phosphate, sodium hydroxide, potassium hydroxide, ammonium hydroxide, sodium carbonate, ammonium carbonate and potassium carbonate (col. 3, lines 64-67). The peroxide that may be used in the peroxide composition includes hydrogen peroxide. The peroxide compositions may be in the form of a liquid (see Table 3 where the composition comprises about 80% water). The reference differs from the instant claims insofar as it does not disclose any particular methods of applying the buffering composition to the teeth and does not disclose using sodium bicarbonate as a base.

Rathburn teaches a tooth cleaning applicator made out of cotton (col. 2, lines 15-20), which is an absorbent material thereby encompassing the instant claim. The

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material is inexpensive and may be applied to the finger (col. 1, lines 35-40). The strip will absorb moisture, deliver the oral care substance to the teeth as well as retain foreign objects (col. 2, lines 25-31). The composition on the strip comprises sodium bicarbonate and flavoring (table in col. 2). The reference differs from the instant claim insofar as it does not teach applying a peroxy compound after applying the bicarbonate composition.

It would have been obvious to one of ordinary skill in the art to have applied the bicarbonate composition with the strip in the method of the primary reference motivated by the desire to use an inexpensive applicator that is not just able to deliver the composition but is also able to remove foreign objects before the whitening composition is applied, as disclosed by the secondary reference.

Claims 1-19 are rejected.

Claims 20-34 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

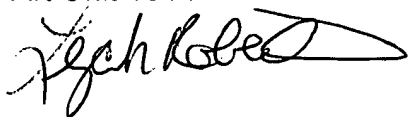
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614



Frederick Krass  
Primary Examiner  
Art Unit 1614

